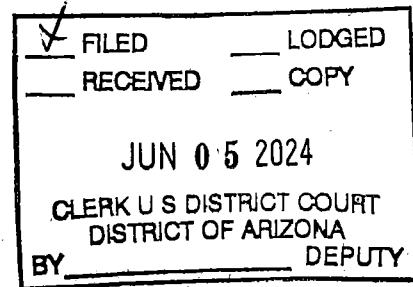


1 Jason Crews
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4



5
6 UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT ARIZONA
8 PHOENIX DIVISION
9

10 Jason Crews,

11 Plaintiff,

12 vs.

13 Persons associated with (602)898-8725,

14 Defendant.
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Case No.: | **CV24-01342-PHX-MTL**

Complaint for Violations of:

1. NEGLIGENT VIOLATIONS
OF THE TELEPHONE CONSUMER
PROTECTION ACT [47 U.S.C. §227 ET
SEQ.]
2. WILLFUL VIOLATIONS OF
THE TELEPHONE CONSUMER
PROTECTION ACT [47 U.S.C. §227 ET
SEQ.]

DEMAND FOR JURY TRIAL

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26
27 ///
28

COMPLAINT- 1

COMPLAINT

Preliminary Statement

1. “When it comes to robocalls, you can only call those who, like Blondie, have said, “Call me. Call me on the line.” If you call people who haven’t opted in , then you face liability under the Telephone Communications Protection Act.” *Perrong v. Bradford*, 2024 WL 2133801, at *1 (E.D. Pa. May 13, 2024).

2. Plaintiff Jason Crews (“Plaintiff”) brings this action under the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C § 227, a federal statute enacted in response to widespread public outrage about the proliferation of intrusive, nuisance calling practices. See *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 745 (2012).

3. The Defendants in this action Persons associated with (602)898-8725 and orchestrated placing at least seven illegal telemarketing calls using an Automated Telephone Dialing System (“ATDS”) to a number assigned to a cellular service which was included on the national Do-Not-Call List.

4.Plaintiff never consented to receive such messages.

Parties

5.Plaintiff Jason Crews (“Crews”) is and was a resident of Maricopa County, Arizona at all relevant times, and a resident of this District.

6.Defendant Persons associated with (602)898-8725’s (“8725”) current identity is unknown, and will be amended once identified.

Jurisdiction & Venue

7.The Court has federal question subject matter jurisdiction over these TCPA claims: *Mims v. Arrow Fin. Services, LLC*, 132 S. Ct. 740 (2012).

8. The Court has specific personal jurisdiction over the Defendants because the defendants caused the events complained herein to occur in Arizona out of which the TCPA claims arose, and the defendants had minimum contacts with Arizona to justify assertion by an Arizona court of personal jurisdiction, *Meyers v. Hamilton Corp.*, 693 P.2d 904 (Ariz. 1985). Defendants intentionally called or caused Plaintiff’s number to be called by dialing an

1 Arizona area code at least seven times within a twelve-month period to advertise their
 2 services despite Plaintiffs number being listed on the national do not call registry in violation
 3 of the TCPA. Additionally 8725 and their representatives are licensed to sell insurance by
 4 the State of Arizona.

5 Venue

6 9. The venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part
 7 of the events or omissions giving rise to the claim occurred in this District, as the calls to
 8 Plaintiff were placed into this District.

9 The Telephone Consumer Protection Act

10 8. In 1991, Congress enacted the TCPA to regulate the explosive growth of the
 11 automated calling industry. In so doing, Congress recognized that “[u]nrestricted
 12 telemarketing . . . can be an intrusive invasion of privacy[.]”: Telephone Consumer
 13 Protection Act of 1991, Pub. L. No. 102-243, § 2(5) (1991) (codified at 47 U.S.C. § 227).

14 9. Under the TCPA, an individuals may be personally liable for the acts alleged in
 15 this Complaint pursuant to 47 U.S.C. § 217 of the TCPA, which reads, inter alia:

16 [T]he act, omission, or failure of any officer, agent, or other person acting for or
 17 employed by any common carrier or user, acting within the scope of his
 18 employment, Case 2:22-cv-02724-ER Document 1 Filed 07/11/22 Page 2 of 11 3
 19 shall in every case be also deemed to be the act, omission, or failure of such carrier
 20 or user as well as of that person. 47 U.S.C. § 217 (emphasis added).

21 10. In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot.
 22 Act of 1991, 27 FCC Rcd. 1830, 1844 ¶ 33 (2012) (footnote and internal quotation marks
 23 omitted). FCC regulations “generally establish that the party on whose behalf a solicitation
 24 is made bears ultimate responsibility for any violations.” In the Matter of Rules and
 25 Regulations Implementing the Tel. Consumer Prot. Act of 1991, 10 FCC Rcd. 12391, 12397
 26 ¶ 13 (1995).

27 11. The FCC confirmed this principle in 2013, when it explained that “a seller ...
 28 may be held vicariously liable under federal common law principles of agency for violations

of either 5 section 227(b) or section 227(c) that are committed by third-party telemarketers.” In the Matter of the Joint Petition Filed by Dish Network, LLC, 28 FCC Rcd. 6574, 6574 ¶ 1 (2013). 22. Under the TCPA, a text message is a call. *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 951 – 52 (9th Cir. 2009).

12. When considering individual liability under the TCPA, other Courts have agreed that an officer or individual involved in the telemarketing at issue may be personally liable under the TCPA. See, e.g., *Jackson Five Star Catering, Inc. v. Beason*, 2013 U.S. Dist. LEXIS 159985, *10 (E.D. Mich. Nov. 8, 2013) (“[M]any courts have held that corporate actors can be individually liable for violating the TCPA where they had direct, personal participation in or personally authorized the conduct found to have violated the statute.”) (cleaned up) and *Maryland v. Universal Elections*, 787 F. Supp. 2d 408, 415-16 (D. Md. 2011) (“If an individual acting on behalf of a corporation could avoid individual liability, the TCPA would lose much of its force.”).

Factual Allegations

13. To promote their services Defendants also relied on the use of ATDS systems.

14. Plaintiff had no prior business relationship with Defendants.

15. Plaintiff is a “person” as defined by 47 U.S.C. § 153(39).

16. The phone number (602) 295-XXXX (“Cell Number”) belongs to Plaintiff.

17. The Cell Number has been on the Do-Not-Call registry since November 7, 2006.

18. Despite this registration, 8725 admitted to placing at least seven calls to Plaintiff.

19. The Cell Number is assigned to a cellular phone used exclusively for personal residential purposes.

20. Plaintiff did not consent to receive telephone calls via ATDS.

21. The Cell Number is not associated with a business.

Calls to Plaintiff

1 22. On or about May 17, 2024, at 8:58 am, Plaintiff received a call presenting caller
2 ID (602) 898-8725.

3 23. Plaintiff was greeted by an individual who asked for Plaintiff and said they were
4 calling on behalf of "Health Enrolment Center".

5 24. Because Plaintiff believed he had received several other similar phone calls in
6 the past he pressed the caller for more specific identifying information.

7 25. Defendant's representatives refused to identify themselves or company, and
8 hung up on Plaintiff.

9 26. On or about May 17, 2024, at 9:01 am, called back (602) 898-8725.

10 27. Plaintiff was greeted by a caller named Abby.

11 28. Abby declined to identify herself or company, and transferred Plaintiff's call to
12 an individual who identified themselves as Ryan.

13 29. Ryan claimed that they called because Plaintiff had filled out a form online
14 requesting more information.

15 30. Ryan confirmed Plaintiff's name and provided an incorrect address as proof of
16 Plaintiff's consent.

17 31. Plaintiff maintained that he did not provide any such consent.

18 32. Plaintiff requested that Ryan send him evidence of that consent.

19 33. Plaintiff never received any such proof.

20 34. Ryan would only say that his company was "Health Enrolment Center".

21 35. When plaintiff attempted to confirm that on various secretary of state searches,
22 he was unable to do so.

23 36. Ryan refused to provide the identity of his lead provider.

24 37. Ryan admitted it could have been a fraudulent opt in saying "They're not calling
25 you and you're being rude. To them, you're being rude and then they just decided to put it
26 on there because there's some people that are bad in this world."

27 38. Ryan admitted to calling Plaintiff seven time saying "So between both of us,
28 nine total. Seven from my company, two from you".

1 39. Ryan said he would put Plaintiff's number on their internal do-not-call list, and
2 that he would block Plaintiff's number so that he would be unable to call back in the future.

3 40. Ryan blocked Plaintiff's number so that it would be impossible for him to identify
4 his identity and the identity of his company.

5 **Defendants' Use of an ATDS**

6 41. 8725's called frequently and from various different numbers.

7 42. 8725's representatives purposefully attempted to conceal the identity of their
8 company.

9 43. When calling back the numbers presented by the caller ID's Plaintiff received
10 the same identical prerecorded message stating "[message]"

11 44. 8725's representatives solicited services did not target Plaintiff individually but
12 rather targeted "the homeowner".

13 45. For these reasons, Plaintiff believes the telemarketers used an ATDS to generate
14 leads for Defendant's debt relief services.

15 46. The calls were conducted using an Automatic Telephone Dialing System
16 (ATDS). As the Supreme Court recently clarified, the key feature of an ATDS is the
17 capacity to store numbers to be called using a random or sequential number generator or to
18 produce numbers to be called using a random or sequential number generator: *Facebook, Inc.*
19 *v. Duguid*, 141 S. Ct. 1163, 1167 (2021).

20 47. The Third Circuit recently clarified that "Congress envisioned a broad
21 understanding of 'equipment'" that constitutes an ATDS. It also clarified that the analysis
22 of whether an ATDS was used in violation of the TCPA centers around "whether the
23 Defendants employ[s] [ATDS] capacities to make automated calls": *Panzarella v. Navient*
24 *Sols., Inc.*, 37 F.4th 867, 873, 878 (3d Cir. 2022). In so doing, it held that Congress intended
25 to "ban all autodialed calls" because Congress "found autodialer technology to be uniquely
26 harmful": *Id.* at 879 (cleaned up).

27 48. In enacting the ATDS prohibition, the Third Circuit cited favorably to
28 Congressional understanding "that telemarketers could transform ordinary computers into

1 autodialers through minor and inexpensive modifications,” including by “relying on
2 computerized databases containing telephone numbers during their dialing campaigns”: *Id.*
3 at 880 (cleaned up). The Third Circuit held that, in passing the TCPA’s ATDS prohibition,
4 Congress intended to remedy the problems caused by callers using computer software to
5 dial numbers randomly or sequentially from a list or database: *Id.*

6 49. The system(s) that Defendants used to place the calls to Plaintiff is/are an
7 ATDS because it would be illogical to dial a number manually, have Plaintiff answer the
8 phone, and only then connect Plaintiff to a human being.

9 50. Audible pauses, clicks, and beeps are hallmark indicia of ATDS systems. This
10 supports the inference that Defendants used an ATDS, such as one that “use[s] a random
11 [or sequential] number generator to determine the order in which to pick phone numbers
12 from a pre-produced list”: *Facebook*, 141 S. Ct. at 1171 n.7.

13 51. Other courts have held, post-Facebook, that allegations similar to those herein
14 of the absence of a relationship between the parties, and the random nature of the
15 automation device (such as the ability to randomly generate caller ID numbers), are all
16 indicia of use of a random or sequential dialing device. This gives rise to the inference at the
17 pleadings stage that an ATDS was used to make the calls: *Camunas v. Nat’l Republican*
18 *Senatorial Comm.*, No. 21-1005, 2021 U.S. Dist. LEXIS 100125 at *11 (E.D. Pa. May 26,
19 2021).

20 52. No facts exist here to support the conclusion that Defendants was calling from
21 a curated list of his past customers. In contrast to a company that dials calls en masse to
22 multiple individuals from a list of telephone numbers (as here), a company that calls its
23 existing customers utilizing an imported customer list does not place calls using an ATDS.
24 Such calling uses a database targeting existing customers’ information rather than computer-
25 generated tables or lists of individuals to be called: *Panzarella*, 37 F.4th at 881–882.

26 53. Plaintiff is ignorant of the exact process by which the system(s) used by
27 Defendants operates other than by drawing the reasonable inference and alleging that the
28 system(s) stores or produces telephone numbers randomly or possibly sequentially based on

1 the facts ascertainable from the calls Plaintiff received, as outlined above. Indeed, as at least
2 one district court explained, “The newly clarified definition of an ATDS is more relevant to
3 a summary judgment motion than at the pleading stage”: *Gross v. GG Homes, Inc.*, No. 3:21-
4 cv-00271-DMS-BGS, 2021 WL 2863623, at *7 (S.D. Cal. July 8, 2021); accord *Miles v.*
5 *Medicredit, Inc.*, No. 4:20-cv- 01186-JAR, 2021 WL 2949565 (E.D. Mo. July 14, 2021).

6 **Defendants’ Conduct Was Knowing and Willing**

7 54. Defendants intentionally called Plaintiff multiple times in order to advertise
8 their services to Plaintiff.

9 55. Defendants knew their actions were in violation of the TCPA and willfully
10 continued their conduct calling Plaintiff multiple times despite the registration of his
11 number on the National Do-Not-Call List.

12 **Vicarious Liability**

13 56. Defendant 8725 through their authorized representatives made multiple auto-
14 dialed robocalls to Plaintiff.

15 57. Representatives of 8725 used utilized software provided by 8725.

16 58. Representatives of 8725 used proprietary information and systems provided by
17 Defendant 8725.

18 59. 8725 authorized its representatives to make the phone calls at issue here.

19 60. 8725 was aware of the phone calls being made by its representatives and
20 accepted referrals from its representatives pursuant to the authorization provided to
21 representatives by 8725.

22 61. 8725 gave access to their proprietary systems and software to Defendants
23 representatives.

24 62. 8725 hired an offshore telemarketer to make phone calls on their behalf.
25 representatives is the agent of 8725 and the offshore telemarketer is the subagent of 8725.

26 63. The offshore telemarketer made the phone calls at the direction and control of
27 8725.

ratification.” *Id.* ; see also *FDS Rest., Inc. v. All Plumbing, Inc.*, 241 A. 3d 222, 238n. 24 (D. C. 2020) (noting that a different provision of the TCPA, 47 U.S.C. § 217, creates vicarious liability for the acts of an agent). The plaintiff must establish the agency relationship between the defendant and the third-party caller to establish vicarious liability. See *Henderson v. United Student Aid Funds, Inc.*, 918 F.3d 1068, 1072-73 (9th Cir. 2019), as amended on denial of reh'g and reh'g en banc (May 6, 2019) (citing *Gomez v. Campbell-Ewald Co.*, 768 F.3d 871, 878 (9th Cir. 2014), *aff'd*, 577 U.S. 153 (2016), as revised (Feb. 9, 2016)).

The TCPA Prohibits All Automated Calls to Protected Numbers

73. The TCPA makes it unlawful "to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using an automated telephone dialing system or an artificial or prerecorded voice ... to any telephone number assigned to a ... paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the party is charged for the call": 47 U.S.C. § 227 (b)(1)(A)(iii).

74. Congress singled out these services for special protection because Congress realized their special importance in terms of consumer privacy (as is the case with cellular phones): *Barr v. Am. Ass'n of Pol. Consultants Inc.*, 140 S. Ct. 2335, 2356, (2020) (Gorsuch, J. & Thomas, concurring in part and dissenting in part).

75. According to findings by the Federal Communications Commission ("FCC"), which is the agency Congress vested with the authority to issue regulations implementing the TCPA, such messages are prohibited because, as Congress found, automated or prerecorded messages are a greater nuisance and invasion of privacy than live ones, are costly, and are inconvenient.

76. The TCPA provides a private cause of action to persons who receive calls in violation of 47 U.S.C. § 227(b)(1)(A). 47 U.S.C. § 227(b)(1)(3).

77. These causes of action apply to users of any of four protected services (pager, cellular, specialized mobile radio [i.e., radio telephony locator beacon or dispatch system], or another radio common carrier service [i.e., ship-to-shore or air-to-ground]), or any service,

1 including residential, VoIP, and landline services, for which the called party is charged:
2 *Lynn, Monarch Recovery Mgmt. Inc.*, 953 F. Supp. 2d 612, 623, (D. Md. 2013).

3 78. "Non-Emergency pre-recorded voice or autodialed calls to the destinations
4 enumerated in 47 U.S.C. § 227(b)(1)(A) are permissible only with the prior express consent
5 of the called party."

6 79. U.S.C. § 227(c)(2) states, "No person or entity shall initiate any telephone
7 solicitation to ... [a] residential telephone subscriber who has registered his or her
8 telephone number on the National Do-Not-Call Registry of persons who do not wish to
9 receive telephone solicitations that is maintained by the Federal Government" and defines
10 "telephone solicitation" as "the initiation of a telephone call or message for the purpose of
11 encouraging the purchase or rental of, or investment in, property, goods, or services, which
12 is transmitted to any person...": U.S.C. § 227(f)(15).

13 80. The FCC also recognized that "wireless customers are charged for incoming
14 calls whether they pay in advance or after the minutes are used": In re Rules and
15 Regulations Implementing the Tel. Consumer Prot. Act of 1991, CG Docket No. 02-278,
16 Report and Order, 18 FCC Rcd. 14014, 14115, ¶ 165 (2003).

17 81. In 2013, the FCC required prior express written consent for all autodialed or
18 prerecorded telemarketing calls ("robocalls") to wireless numbers and residential lines.
19 Specifically, it ordered:

20 [A] Consumer's written consent to receive telemarketing robocalls must be signed
21 and be sufficient to show that the consumer: (1) received "clear and conspicuous
22 disclosure" of the consequences of providing the requested consent, i.e., that the
23 consumer will receive future calls that deliver prerecorded messages by or on behalf
24 of a specific seller; and (2) having received this information, agrees unambiguously to
25 receive such calls at a telephone number the consumer designates. In addition, the
26 written agreement must be obtained "without requiring, directly or indirectly, that
27 the agreement be executed as a condition of purchasing any good or service."

28 82. *In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*,
27 FCC Rcd. 1830, 1844 (2012) (footnotes omitted).

83. 47 C.F.R. § 64.1200 extends 47 U.S.C. § 227 and establishes several delivery
restrictions. It states, "No person or entity may ... [e]xcept as provided ... initiate any

1 telephone call ... using an automatic telephone dialing system or an artificial or prerecorded
2 voice."

3 84. 47 C.F.R. § 64.1200(a)(1) specifically protects the following: "emergency
4 telephone line," "guest room or patient room of a hospital, health care facility, elderly
5 home, or similar establishment," and/or "cellular telephone service." 47 C.F.R. §
6 64.1200(a)(2) further prohibits entities from "initiat[ing], or caus[ing]to be initiated, any
7 telephone call that includes or introduces an advertisement or constitutes telemarketing,
8 using an automatic telephone dialing system or an artificial or prerecorded voice, to any of
9 the lines or telephone numbers described... "

10 85. The National Do-Not-Call Registry allows consumers to register their telephone
11 numbers and thereby indicate their desire to not receive telephone solicitations at those
12 numbers: 47 C.F.R. § 64.1200(c)(2).

13 86. A listing on the Registry "must be honored indefinitely, or until the registration
14 is cancelled by the consumer or the telephone number is removed by the database
15 administrator": *Id.*

16 87. The TCPA and implementing regulations prohibit the initiation of telephone
17 solicitations to residential telephone subscribers whose numbers are on the Registry and
18 provide a private right of action against any entity making those calls or "on whose behalf"
19 such calls are promoted: 47 U.S.C. § 227(c)(5); 47 C.F.R. § 64.1200(c)(2).

20 88. 47 C.F.R. § 64.1200(d) states, "No person or entity shall initiate any call for
21 telemarketing purposes to a residential telephone subscriber unless such person or entity
22 has instituted procedures for maintaining a list of persons who request not to receive
23 telemarketing calls made by or on behalf of that person or entity." It goes on to establish
24 specific "minimum standards":

25 (1) "Persons or entities making calls for telemarketing purposes must have a
26 written policy, available upon demand..."

27 (2) "[P]ersonnel engaged in any aspect of telemarketing must be informed and
trained in the existence and use of the do-not-call list."

28 (3) "If a person or entity making a call for telemarketing purposes ... receives a
request ... not to receive calls from that person or entity, the person or entity

1 must record the request and place the subscriber's name ... and telephone
 2 number on the do-not-call list at the time the request is made ... must honor a
 3 residential subscriber's do-not-call request within a reasonable time from the
 4 date such request is made."

5 (4) "A person or entity making a call for telemarketing purposes must provide
 6 the called party with the name of the individual caller, the name of the person or
 7 entity on whose behalf the call is being made, and a telephone number or
 8 address at which the person or entity may be contacted."

9 (5) "A person or entity making calls for telemarketing purposes must maintain a
 10 record of a consumer's request not to receive further telemarketing calls."

11 Claims

12 Count One

13 89. Plaintiff incorporates the foregoing allegations as fully set forth herein.

14 90. The foregoing acts and omissions of Defendants and/or their affiliates,
 15 agents, and/or other persons or entities acting on Defendants' behalf constitute violations
 16 of the TCPA, 47 U.S.C. § 227, by sending calls, except for emergency purposes, to
 17 Plaintiff's telephone which is assigned to a cellular telephone service using an ATDS.

18 91. As a result of their unlawful conduct, Defendants invaded Plaintiff's personal
 19 privacy, causing Plaintiff to suffer damages and, under 47 U.S.C. § 227(b)(3)(B), entitling
 20 him to recover \$500 in civil fines for each violation and an injunction requiring Defendants
 21 to stop his illegal calling campaign.

22 92. Plaintiff is also entitled to and does seek injunctive relief prohibiting
 23 Defendants and/or his affiliates, agents, and/or other persons or entities acting on
 24 Defendants' behalf from violating the TCPA, 47 U.S.C. § 227, by making calls or sending
 25 messages, except for emergency purposes, to any number using an artificial or prerecorded
 26 voice in the future.

27 93. Plaintiff is entitled to an award up to \$1500 in damages for each knowing and
 28 willful violations of 47 U.S.C. § 227(b)(3)(B)

94. Defendants' violations were willful and/or knowing.

Count Two

95. Plaintiff incorporates the foregoing allegations as fully set forth herein.

96. Defendants called Plaintiff's private residential telephone number which was registered on the National Do-Not-Call Registry more than thirty-one (31) days prior to the calls, in violation of 47 U.S.C. § 227(c)(3)(F) and 47 C.F.R. § 64.1200(c)(2).

97. As a result of their unlawful conduct, Defendants invaded Plaintiff's personal privacy, causing Plaintiff to suffer damages and, under 47 U.S.C. § 227(c)(3)(F) entitling him to recover \$500 in civil fines for each violation and an injunction requiring Defendants to stop his illegal calling campaign.

98. Plaintiff is entitled to an award up to \$1500 in damages for each knowing and willful violations of 47 U.S.C. § 227(c)(3)(F).

99. Defendants' violations were willful and/or knowing.

Relief Sought

WHEREFORE, Plaintiff requests the following relief:

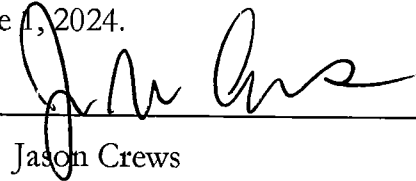
A. Injunctive relief prohibiting Defendants from calling telephone numbers using an artificial or prerecorded voice and/or ATDS.

B. Because of Defendants' violations of the TCPA, Plaintiff seeks for himself \$500 in damages for each violation or—where such regulations were willfully or knowingly violated—up to \$1,500 per violation, pursuant to 47 U.S.C. § 227(b)(3).

C. Because of Defendants' violations of the TCPA, Plaintiff seeks for himself \$500 in damages for each violation or—where such regulations were willfully or knowingly violated—up to \$1,500 per violation, pursuant to 47 U.S.C. § 227(c)(3).

D. Such other relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED on this June 1, 2024.


Jason Crews